



2024:DHC:10160



\$~27 to 31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 23rd December, 2024*+ **MAC.APP. 677/2024 & CM APPL. 75956/2024****U P STATE ROAD TRANSPORT CORPORATION**

Through its Regional Manager,
Ghaziabad Region, Kaushambi,
Ghaziabad, Uttar Pradesh

.....Appellant

Through: Mr. Shadab Khan, Advocate.

versus

1. **SAPNA**

W/o Late Shri Rakesh Kumar

.....Respondent No. 1

2. **DIVYANSHI**

D/o Late Shri Rakesh Kumar

.....Respondent No. 2

3. **CHANDRAKANT**

S/o Late Shri Rakesh Kumar

.....Respondent No. 3

4. **SITA**

W/o Shri Yad Ram

.....Respondent No. 4

5. **YAD RAM**

S/o Late Shri Arjun Singh

.....Respondent No. 5

All residents of: -

H. No. 88, Gram Nivari,
Khanrika/Bhind, MP-477111

Also at: -

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MAC.APPs. 677/2024, 678/2024, 679/2024, 680/2024, 681/2024**Page 1 of 12**



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A-62, Gali No. 11, Ambedkar,
Ghaziabad, UP-201009

6. **LRs OF DECEASED HAR PAL**

S/o Jagroop Singh,

(LRs of driver-cum-regd. Owner of EECO also died in accident)

(i) **JAGROOP SINGH**

S/o Shri Gulab Singh,

R/o H-133, H-Block,

Old Seemapuri, Delhi-110095

.....Respondent No. 6

7. **HDFC ERGO GENERAL INSURANCE CO. LTD.**

(Insurer of EECO Car),

Ambadeep Building,

14, KG Marg, New Delhi-110001

.....Contested Respondent

8. **RAM BHOOL (DRIVER)**

S/o Shri Ramanand,

R/o Wajidpur, Jansath,

Muzaffarnagar, U.P.

.....Proforma Respondent

Through: None.

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MAC.APP. 678/2024 & CM APPL. 75977/2024

U P STATE ROAD TRANSPORT CORPORATION

Through its Regional Manager,

Ghaziabad Region, Kaushambi,

Ghaziabad, Uttar Pradesh

.....Appellant

Through: Mr. Shadab Khan, Advocate.

versus

1. **MUKESH (INJURED)**

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S/o Shri Virender,
R/o J-285, Railway Colony,
Punjab Lan Kotwali,
District Ghaziabad, U.P.

.....Respondent No. 1

2. **LRs OF DECEASED HAR PAL**

S/o Jagroop Singh,
(LRs of driver-cum-regd. Owner of EECO also died in accident)

(i) **JAGROOP SINGH**

S/o Shri Gulab Singh,
R/o H-133, H-Block,
Old Seemapuri, Delhi-110095

.....Respondent No. 2

3. **HDFC ERGO GENERAL INSURANCE CO. LTD.**

(Insurer of EECO Car),
Ambadeep Building,
14, KG Marg, New Delhi-110001

.....Contested Respondent

4. **RAM BHOOL (DRIVER)**

S/o Shri Ramanand,
R/o Wajidpur, Jansath,
Muzaffarnagar, U.P.

.....Proforma Respondent

Through: None.

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MAC.APP. 679/2024 & CM APPL. 75979/2024

U P STATE ROAD TRANSPORT CORPORATION

Through its Regional Manager,
Ghaziabad Region, Kaushambi,
Ghaziabad, Uttar Pradesh

.....Appellant

Through: Mr. Shadab Khan, Advocate.

versus

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MAC.APPs. 677/2024, 678/2024, 679/2024, 680/2024, 681/2024

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1. **LAKHAN (INJURED)**

S/o Shri Nam Dev,
R/o H-140, Shahdara,
Old Seemapuri, Delhi-110095

.....Respondent No. 1

2. **LRs OF DECEASED HAR PAL**

S/o Jagroop Singh,
(LRs of driver-cum-regd. Owner of EECO also died in accident)

(i) **JAGROOP SINGH**

S/o Shri Gulab Singh,
R/o H-133, H-Block,
Old Seemapuri, Delhi-110095

.....Respondent No. 2

3. **HDFC ERGO GENERAL INSURANCE CO. LTD.**

(Insurer of EECO Car),
Ambadeep Building,
14, KG Marg, New Delhi-110001

.....Contested Respondent

4. **RAM BHOOL (DRIVER)**

S/o Shri Ramanand,
R/o Wajidpur, Jansath,
Muzaffarnagar, U.P.

.....Proforma Respondent

Through: None.

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MAC.APP. 680/2024 & CM APPL. 75984/2024

U P STATE ROAD TRANSPORT CORPORATION

Through its Regional Manager,
Ghaziabad Region, Kaushambi,
Ghaziabad, Uttar Pradesh

.....Appellant

Through: Mr. Shadab Khan, Advocate.

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MAC.APPs. 677/2024, 678/2024, 679/2024, 680/2024, 681/2024

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versus

1. SACHIN (INJURED)

S/o Shri Nanak,
R/o 277, Gali No. 3,
Near Railway Station Sunderpuri,
District Ghaziabad, U.P. 201009

.....Respondent No. 1

2. LRs OF DECEASED HAR PAL

S/o Jagroop Singh,

(LRs of driver-cum-regd. Owner of EECO also died in accident)

(i) JAGROOP SINGH

S/o Shri Gulab Singh,
R/o H-133, H-Block,
Old Seemapuri, Delhi-110095

.....Respondent No. 2

3. HDFC ERGO GENERAL INSURANCE CO. LTD.

(Insurer of EECO Car),
Ambadeep Building,
14, KG Marg, New Delhi-110001

.....Contested Respondent

4. RAM BHOOL (DRIVER)

S/o Shri Ramanand,
R/o Wajidpur, Jansath,
Muzaffarnagar, U.P.

.....Proforma Respondent

Through: None.

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MAC.APP. 681/2024 & CM APPL. 75989/2024**U P STATE ROAD TRANSPORT CORPORATION**

Through its Regional Manager,
Ghaziabad Region, Kaushambi,
Ghaziabad, Uttar Pradesh

.....Appellant

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Through: Mr. Shadab Khan, Advocate.

versus

1. **GOPAL (INJURED)**

S/o Shri Ramhet,
R/o 648/2, Barat Ghar Ke Pass,
Jhabarpurwa, Dibiyapur,
Auraiya, UP-206244

.....Respondent No. 1

2. **LRs OF DECEASED HAR PAL**

S/o Jagroop Singh,
(LRs of driver-cum-regd. Owner of EECO also died in accident)

(i) **JAGROOP SINGH**

S/o Shri Gulab Singh,
R/o H-133, H-Block,
Old Seemapuri, Delhi-110095

.....Respondent No. 2

3. **HDFC ERGO GENERAL INSURANCE CO. LTD.**

(Insurer of EECO Car),
Ambadeep Building,
14, KG Marg, New Delhi-110001

.....Contested Respondent

4. **RAM BHOO (DRIVER)**

S/o Shri Ramanand,
R/o Wajidpur, Jansath,
Muzaffarnagar, U.P.

.....Proforma Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 75957/2024 (Exemption) in MAC.APP. 677/2024

CM APPL. 75978/2024 (Exemption) in MAC.APP. 678/2024

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CM APPL. 75980/2024 (Exemption) in MAC.APP. 679/2024
CM APPL. 75985/2024 (Exemption) in MAC.APP. 680/2024
CM APPL. 75990/2024 (Exemption) in MAC.APP. 681/2024

1. Allowed, subject to all just exceptions.
2. The Applications are disposed of.

MAC.APP. 677/2024

MAC.APP. 678/2024

MAC.APP. 679/2024

MAC.APP. 680/2024

MAC.APP. 681/2024

3. The present Appeals under Section 173 of the Motor Vehicles Act, 1988 have been filed on behalf of the Appellants against the Award dated 19.09.2024 vide which compensation amounts have been awarded on account *demise of Shri Rakesh Kumar*, and injuries suffered by four injured persons, in the road accident on 12.05.2019.
4. The grounds on which the impugned Award have been challenged are: -

MAC.APP. 677/2024, MAC.APP. 678/2024, MAC.APP. 679/2024,
MAC.APP. 680/2024, MAC.APP. 681/2024

- (i) That it is the case of head on collision and therefore, it is a case of contributory negligence and the compensation amount granted to the Claimants, is liable to be reduced; and
- (ii) That the rate of interest has been granted @ 8% per annum which is on the higher side, for which reliance has been placed on the decision of *Bijoy Kumar Dugar vs. Bidya Dhar Dutta and Others*, (2006) 3 SCC 242.



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MAC.APP. 677/2024 (on account of demise of Sh. Rakesh Kumar): An additional ground is taken:

(iii) That the Loss of Consortium has been granted to the Claimants of deceased Shri Rakesh Kumar, by enhancing the same by 20% in view of the decision in National Insurance Company vs. Pranay Sethi & Ors., 2017 (16) SCC 680. This Judgment of Pranay Sethi (supra) is of 2017 and the enhancement of Loss of Consortium by 20% has been incorrectly granted since the accident is of 2019.

Submissions heard and record perused.

5. The facts in brief are that on 12.05.2019, the UP Roadways Bus bearing No. UP-11T-5527 was being driven by Shri Ram Bhool, Driver, on the route Delhi to Rishikesh. At about 04:30 P.M., when the Bus reached near Village Tigai, Khatoli, the EECO Car bearing No. DL-5CE-6832 which was coming from the opposite direction, had a head on collision with the Bus, in which Shri Rakesh Kumar died, while the other persons/Claimants suffered injuries.

Contributory Negligence:

6. The *first ground of challenge* is that the Driver of EECO Car was equally responsible in causing the head on collision.

7. The Claimants in support of their case, had examined three eyewitnesses, namely, *PW1/Gopal, PW2/Lakhan and PW3/Mukesh*, who all deposed that the offending UP Roadways Bus was being driven by its Driver, Shri Ram Bhool at a high speed, in a rash and negligent manner without taking due precautions and blowing the horn. It came from the opposite direction after changing its lane and hit the EECO Car with great



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force. The eyewitnesses had been examined *in extenso* by the Appellant, but no material contradiction could be brought forth.

8. Their testimony is fully corroborated by the *site plan* prepared by the Investigating Officer while conducting the investigations in FIR No. 238/2019 wherein it is clearly depicted that the offending UP Roadways Bus had suddenly changed its lane and got into the lane of the traffic coming from the opposite direction and thereby caused the head on collision.

9. The Respondent/Shri Ram Bhool, Driver of the offending UP Roadways Bus, had appeared as R1W1 and deposed that while he was driving the said offending UP Roadways Bus, no accident took place. However, he admitted in his cross-examination that he was arrested and granted bail in the FIR No. 238/2019. He also admitted that the offending UP Roadways Bus was seized by the local Police and subsequently released on *superdari*. The evidence of the three eyewitnesses is fully corroborated by the criminal investigations. The Chargesheet has also admittedly been filed against Shri Ram Bhool, Driver of the offending UP Roadways Bus.

10. He tried to take a defence that the offending UP Roadways Bus at the time of accident was parked in the Depot and he had gone back to his house. However, he admitted that he had not filed any Application or complaint against his alleged false implication.

11. Pertinently, the most relevant evidence to establish the defence that the offending UP Roadways Bus was not on the road at the time of accident, but was in the Depot, was to produce the Depot Record. But pertinently, no Depot record has been produced as a proof of this defence.

12. The argument addressed on behalf of the Appellant that it was a head



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on collision case and therefore, it is a case of contributory negligence, is not tenable. There cannot be an inevitable conclusion in every head-on Collision that it is a case of contributory negligence. The surrounding circumstances have to be necessarily considered to ascertain if it is a case of contributory negligence. In the present case, it has clearly come on record from the testimony of the three eyewitnesses and from the investigations conducted by the Police, that the offending UP Roadways Bus had deflected to the opposite lane and thereby caused the head on collision. Under these circumstances, no negligence whatsoever can be attributed to the driver of the EECO Car.

13. The learned Claim Tribunal has rightly observed that the negligence in causing the accident was solely of Shri Ram Bhool, the Driver of the offending UP Roadways Bus. Accordingly, there is no reason to interfere with the findings of the learned Claim Tribunal.

Loss of Consortium in MACT No.403/2019:

14. The *second ground of challenge* to the impugned Award by the Appellant is that the Loss of Consortium has been given to each of the Claimants by the learned Claim Tribunal by enhancing it by 20%, even though the accident had occurred in the year 2019, while the decision in Pranay Sethi (supra) had come in 2017.

15. Learned counsel for the Appellant submits that since three years had not elapsed from 2017, 20% enhancement towards the Loss of Consortium could not have been given.

16. However, the argument of the learned counsel for the Appellant is completely fallacious for the simple reason that the decision in Pranay Sethi



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(supra) had merely explained the formula for calculating the Loss of Consortium and it is not a new law that was laid down with prospective effect. The accident in the present case had occurred on 12.05.2019, while the compensation has been granted on 19.09.2024 *vide* the impugned Award, i.e., after a period of four years. Since from the date of accident, more than three years had elapsed, the learned Claim Tribunal has calculated the Loss of Consortium by giving benefit of 10% increase after every three year and thereby taking the Loss of Consortium as 20%. There is a marginal difference in granting the compensation towards Loss of Consortium @ 48,000/- to each of the Claimants.

17. However, this Court is not inclined to interfere with the amount granted by the learned Claim Tribunal towards Loss of Consortium.

Rate of Interest:

18. The *third ground of challenge* to the impugned Award by the Appellant is that interest @ 8% per annum so granted is on the higher side.

19. However, looking at the prevailing market rate and these are the compensation petitions, there is no ground to interfere with the findings of the learned Claim Tribunal.

Conclusion:

20. In view of above, there is no merit in the present Appeals which are hereby dismissed along with pending Applications.

21. The statutory amount be returned to the Appellants, as per rules.

(NEENA BANSAL KRISHNA)



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JUDGE

DECEMBER 23, 2024

S.Sharma

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